

FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
HOWARD JAY LUBIN, D.D.S.,	:	93 DEN 018
RESPONDENT.	:	

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Howard Jay Lubin
1274 April Lane
Green Bay, WI 54304

Wisconsin Dentistry Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Howard Jay Lubin (D.O.B. 12/04/57) is duly licensed in the state of Wisconsin as a dentist (license # 3187). This license was first granted on August 1, 1983.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 1274 April Lane, Green Bay, WI 54304.
3. On May 27, 1992, patient JD came to Respondent's office, complaining of discomfort in tooth # 4. Examination of the tooth revealed a deep fractured amalgam core filling. Respondent discussed treatment alternatives with JD, and cautioned the patient that eventual root canal treatment may be necessary. The patient chose to undergo a core build up and placement of a PVC-sp crown with one pin.

4. On August 12, 1992, patient JD came to Respondent's office, indicating that the crown had come loose, and that there had been sporadic pain in tooth # 4. Respondent noted some mobility of the tooth and that the crown was off.

5. On August 14, 1992, Respondent proceeded with a root canal treatment of tooth # 4. A post treatment X-ray revealed that Respondent failed to completely obturate the canal. Respondent was aware that the fill appeared to be " 2-3 mm shy of the canal length." Respondent proceeded to recement the crown using 2 pins and a resin core, but cautioned JD that a post and core may be needed.

6. On October 16, 1992, JD complained that the crown had come loose. Respondent informed the patient that a post and core was needed, and that JD should increase oral hygiene. Patient JD did not return to Respondent's office.

7. On March 23, 1993, tooth # 4 was extracted by another dentist as it was abscessed and not salvageable.

CONCLUSIONS OF LAW

By the conduct described above, Howard Jay Lubin is subject to disciplinary action against his license to practice as a dentist in the state of Wisconsin, pursuant to Wis. Stats. sec. 447.07(3)(a) and (h), and Wis. Adm. Code sec. DE 5.02(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Howard Jay Lubin is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED that Respondent shall pay the costs of investigation and prosecution of this action in the sum of \$ 200.00 to the Department of Regulation and Licensing within sixty days of the date of this Order.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

This Order shall become effective upon the date of its signing.

WISCONSIN DENTISTRY EXAMINING BOARD

By: Thomas G. Brandt DDS
A Member of the Board

5-3-95
Date

jh

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
HOWARD JAY LUBIN, D.D.S.,	:	93 DEN 018
RESPONDENT	:	

It is hereby stipulated between Howard Jay Lubin, personally on his own behalf and James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Dentistry Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Dentistry Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

7. The Division of Enforcement joins Respondent in recommending the Dentistry Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Howard Jay Lubin, D.D.S.
Howard Jay Lubin, D.D.S.

March 29, 1995
Date

James W. Harris, Attorney
James W. Harris, Attorney
Division of Enforcement

April 24, 1995
Date

jh

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN DENTISTRY EXAMINING BOARD.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

MAY 4, 1995.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)